

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

West District, Beverly Hills Courthouse, Department 205

21SMCV01620

**HECTOR CHAVEZ vs ASURION, LLC, et al.**

January 12, 2023

9:00 AM

Judge: Honorable Edward B. Moreton, Jr.

Judicial Assistant: J. Fletes

Courtroom Assistant: R. Salazar

CSR: Karen Phillips, CSR#4425

ERM: None

Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Jeremy F. Bollinger

For Defendant(s): Jyoti Mittal via La CourtConnect

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**NATURE OF PROCEEDINGS:** Hearing on Motion - Other Motion for Preliminary Approval of Class Action Settlement

The matter is called for hearing.

The Court issues a tentative ruling:

**BACKGROUND**

Plaintiff Henry Chavez sues his former employer, Defendants Asurion and Asurion UBIF Franchise LLC (collectively "Asurion"), for alleged wage and hour violations. Asurion is a provider of device insurance, warranty and support services for cell phones, consumer electronics and home appliances. Plaintiff was employed as an hourly paid non-exempt employee at Asurion's electronic repair shops, selling warranties and fixing cell phones and other electronic devices. Plaintiff earned sales incentives and bonuses for reaching certain sales goals and for each warranty insurance product he sold on household electronics.

Plaintiff's claims arise out of Asurion's alleged failure to pay rest and meal break period premiums and sick leave at the correct regular rate of pay. Plaintiff alleges Asurion was required to factor earned sales incentives/bonuses when calculating the regular rate of compensation for payment of premium wages and when calculating the regular rate of pay for sick leave. Plaintiff also alleges that Asurion required Plaintiff to sign an arbitration agreement that improperly waived Plaintiff's right to bring a representative claim under California's Private Attorneys General Act of 2004 ("PAGA") and an unlawful confidentiality agreement prohibiting him from disclosing his wages.

In October 2021, Plaintiff filed a complaint alleging a single cause of action against Asurion for civil penalties under PAGA. The PAGA-only complaint sought civil penalties under PAGA for

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(1) improper inclusion of PAGA waiver in the arbitration agreement, (2) improper inclusion of confidentiality clause in the employment agreement, (3) failure to pay meal period and rest break premiums at the “regular rate of compensation,” (4) failure to pay sick pay at the “regular rate of pay,” (5) failure to timely pay wages during employment, (6) failure to maintain accurate records, and (7) failure to pay timely wages upon termination of employment.

The parties have stipulated that Plaintiff will file a First Amended Complaint (FAC) that amends the PAGA-only complaint to add class claims. Plaintiff seeks to represent a class of all current and former non-exempt, hourly paid employees of Asurion employed in California during the period from June 29, 2020 to the date preliminary approval of class settlement is granted or October 1, 2022, whichever is sooner. The FAC alleges claims against Asurion for (1) failure to pay meal period and rest break premiums at the regular rate of compensation, (2) failure to provide accurate wage statements, (3) failure to timely pay wages upon cessation of employment, (4) unfair competition and (5) civil penalties under PAGA.

This hearing is on Plaintiff’s unopposed motion for preliminary approval of class action and PAGA settlement. On June 6, 2022, the parties participated in a mediation before T. Warren Jackson, Esq. After a full day of negotiations, the parties reached an agreement (the “Settlement Agreement”). The proposed settlement is for a gross settlement amount of \$200,000 which – after requested deductions for attorneys’ fees, an enhancement award for the class representative, and settlement administrator expenses – results in an average settlement award for each putative class member and PAGA-aggrieved employee of approximately \$370.

#### SETTLEMENT CLASS AND AGGRIEVED EMPLOYEE DEFINITIONS

The FAC includes both class claims and PAGA claims. “Class” means “all current and former non-exempt, hourly paid employees of Asurion employed in California at any time during the Class Period.” (Settlement Agreement ¶1.5.) “Class Period” means “the period from June 29, 2020 to the date of Preliminary Approval of the Class Settlement is granted, or October 1, 2022 whichever is sooner.” (Settlement Agreement ¶1.12.) The parties stipulate to class certification for settlement purposes only. (Settlement Agreement ¶2.5.) There are 263 class members. (Settlement Agreement ¶4.1.)

In addition to the class claims, Plaintiff is asserting PAGA claims on behalf of “Aggrieved Employees” who are “all current and former non-exempt, hourly paid employees of Asurion employed in California at any time during the PAGA Period.” (Settlement Agreement ¶1.4.) “PAGA Period” means “the period from July 20, 2020 to the date the Preliminary Approval of the Class Settlement is granted, or October 1, 2022, whichever is sooner.” (Settlement

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Agreement ¶1.31.) There are 249 Aggrieved Employees. (Settlement Agreement ¶4.1.)

**TERMS OF SETTLEMENT AGREEMENT**

The essential terms of the Settlement Agreement are as follows:

· Amendment of Complaint

o The parties stipulated that Plaintiff will amend its PAGA-only complaint to include class claims. (Settlement Agreement ¶2.1.)

· The Gross Settlement Amount (“GSA”) is \$200,000, non-reversionary. (Settlement Agreement ¶3.1.) Employer’s share of payroll taxes will be paid separately from the GSA. (Ibid.)

· The Net Settlement Amount (“NSA”) is the GSA minus the following:

o Up to \$70,000 (35%) for attorneys’ fees (Settlement Agreement ¶3.2.2.)

o Up to \$15,000 for litigation costs (Ibid.)

o Up to \$10,000 for a class representative service payment to Plaintiff (Settlement Agreement ¶3.2.1.) and

o Up to \$7,500 for settlement administration costs (Settlement Agreement ¶3.2.3)

· Payment to the California Labor and Workforce Development Agency (LWDA):

o PAGA penalties in the amount of 30% of the NSA, with 75% allocated to the LWDA (approximately \$21,937.50) (Settlement Agreement ¶¶1.34, 3.2.5.). (The Court notes there is a discrepancy between the amounts set forth in the settlement agreement and counsel’s declaration. The declaration states that \$4,500 will be paid to LWDA while the Settlement Agreement provides for a payment of \$21,937.50. Bollinger Decl. ¶66.)

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· Payment to each Participating Class Member:

o NSA will be allocated among Participating Class Members on a proportional basis based on the number of Work Weeks worked during the Class Period and whether the Participating Class Member experienced a termination during the Class Period. (Settlement Agreement ¶3.2.4.)

o Each individual class payment will be allocated as 20% to wages and 80% to penalties and interest. (Settlement Agreement ¶3.2.4.1.)

· Payment to each Aggrieved Employee:

o PAGA Penalties in the amount of 30% of the NSA, with 25% allocated to Aggrieved Employees (approximately \$7,312.50) (Settlement Agreement ¶¶ 1.34, 3.2.5.) (The Court notes there is a discrepancy between the amounts set forth in the settlement agreement and counsel's declaration. The declaration states that \$1,500 will be paid to Aggrieved Employees while the Settlement Agreement provides for a payment of \$7,312.50. Bollinger Decl. ¶66.)

o Each individual PAGA payment is calculated by (a) dividing the Aggrieved Employees' share of the 25% of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (Settlement Agreement ¶3.2.5.1.)

· Funding of Settlement Amount

o Asurion will fully fund the GSA and its share of payroll taxes by transmitting the funds to the settlement administrator no later than 14 calendar days after the Effective Date. (Settlement Agreement ¶4.3.)

o "Effective Date" means the later of (i) if no timely objections are filed or are withdrawn prior to Final Approval, then 60 calendar days after the date the Court enters Judgment or (ii) if a Class Member files an objection to the Settlement, the Effective Date shall be the later of the

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following events: five business days after the period for filing any appeal, writ or other appellate proceeding opposing Final Approval has elapsed without any appeal, writ or other appellate proceeding having been filed, or five business days after any appeal, writ or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief and the Settlement has been upheld with no right to pursue further remedies or relief. (Settlement Agreement ¶1.18.)

· Non-Participating Class Members' Portion

o Non-Participating Class Members (i.e., those who opt out) will not receive any class payments. The administrator will retain amounts equal to their individual class payments in the NSA for distribution to Participating Class Members on a pro rata basis. (Settlement Agreement ¶3.2.4.2.)

· Uncashed Checks

o Any checks that are uncashed and cancelled after the void date (180 days after the date of mailing the Class Notice) shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member, leaving no "unpaid residue" subject to the requirements of Code Civ. Proc. Section 384 subd. (b) and no Cy Pres recipient for the Court to approve. (Settlement Agreement ¶4.4.3.)

· No Claim Form

o Class Members will not have to submit a claim form in order to receive their individual class payments. (Settlement Agreement ¶3.1.)

· Release

o Participating Class Members will release Released Parties from all claims pleaded in the Amended Complaint in the Action and any PAGA letter sent to the LWDA by Plaintiff and

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which reasonably could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action, against the Released Parties, for work performed during the Class Period. (Settlement Agreement ¶5.2.)

o All Aggrieved Employees will release the Released Parties from any and all claims in violation of PAGA, predicated on the facts and/or claims alleged in the Action and/or any PAGA letter sent to LWDA by Plaintiff in any way premised in whole or in part on any of the Released Class Claims that arose at any time during the PAGA Period. (Settlement Agreement ¶5.3.)

o Plaintiff will release all claims set forth in the Action, predicated on the same or similar facts alleged in the FAC and/or PAGA Letter, as well as any claims that reasonably could have been pled which arise from the same or similar facts concerning Plaintiff or the putative class. Plaintiff also waives rights under Civ. Code Section 1542. (Settlement Agreement ¶¶5.1, 5.1.1.)

o “Released Parties” means Asurion LLC and Asurion UBIF Franchise LLC and each of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates as well as each of their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers and any individual or entity which could be jointly liable with Asurion.

o Releases are effective on the date when Asurion fully funds the entire GSA. (Settlement Agreement ¶5.)

· Selection of Administrator

o The parties have jointly selected Phoenix Settlement Administrators to serve as the administrator. (Settlement Agreement ¶7.1.)

· Opt Out

o Each Class Member shall have 45 calendar days from the mailing of the Notice to complete and postmark a written request for exclusion. The request need not be in any particular form so long as it communicates a clear desire not to be included in the Settlement, and identifies a full name, date of birth and current address along with a signature. (Settlement Agreement ¶7.5.1.)

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o If thirteen or more Class Members opt out of the Settlement, Asurion shall have the sole and absolute discretion to rescind or void the Settlement Agreement within 20 days after receiving from the Settlement Administrator the final list of requests for exclusion. (Settlement Agreement ¶¶7.5.3, 9.)

· Challenges to Calculation of Payment

o Each Class Member shall have 45 calendar days from the mailing of the Notice to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. (Settlement Agreement ¶7.6.)

· Objections to Settlement

o Only Participating Class Members may object to the class action components of the Settlement Agreement, including contesting the fairness of the Settlement and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. (Settlement Agreement ¶7.7.)

o Participating Class Members may send written objections to the Administrator by fax, email or mail. In the alternative, Participating Class Members may appear in Court to present verbal objections at the Final Approval Hearing. (Settlement Agreement ¶7.7.2.)

o

The Settlement Agreement was sent to the LWDA on December 4, 2022. (Bollinger Decl. ¶4, Ex. 3.)

**ANALYSIS OF SETTLEMENT AGREEMENT**

Does a Presumption of Fairness Exist?

On a motion for preliminary approval, “[t]he judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms[.]” (Manual for Complex

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Litigation, Fourth (2004) § 21.632.) “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1802.)

On the first factor, the settlement was reached through arm’s length negotiations. The parties attended an all day mediation with a neutral mediator. After multiple settlement proposals were exchanged and rejected, the parties finally reached an agreement which is memorialized in the Settlement Agreement. The negotiations were adversarial and non-collusive. (Bollinger Decl. ¶15.) And the settlement was endorsed by a mediator with extensive experience in litigating and mediating large class action and PAGA lawsuits in California. (Moss Decl. ¶2.)

As to the second factor, the investigation and discovery conducted was sufficient to allow counsel and the Court to act intelligently. Plaintiff’s counsel performed a detailed investigation into the claims at issue which included (1) determining Plaintiff’s suitability as a class representative through interviews, background investigation and analyses of respective employment files and related records, (2) evaluating Plaintiff’s potential representative claims, (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer, (4) analyzing employee records, (5) reviewing Asurion’s employment policies and practices, (6) interviewing other employees, (7) researching settlements in similar cases, (8) evaluating Plaintiff’s claims and estimating Defendant’s liability for purposes of settlement, (9) preparing for and participating in a full day mediation, (10) propounding formal discovery and (11) reviewing informal discovery. (Bollinger Decl. ¶13.) Through informal discovery, Plaintiff’s counsel had all of the necessary pay data, time data, applicable arbitration agreement with class and representative waivers, Pay Codes, and relevant policies to assess the claims. (Settlement Agreement ¶2.4.)

As to the third factor, counsel is experienced in similar litigation. Jeremy Bollinger has 14 years experience litigating class action lawsuits. (Bollinger Decl. ¶56.) His partner Daniel Moss has been an employment lawyer for over four decades, and has been lead counsel in dozens of class, collective and representative actions over the course of his career. (Moss Decl. ¶¶4-5.) The firm, Moss Bollinger LLP, specializes in class actions and has been appointed class counsel in numerous cases. (Bollinger Decl. ¶¶56, 58.)

As to the fourth factor --the percentage of the class that has objected, this cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶14:139.18) (“Should the court receive objections to the proposed



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settlement, it will consider and either sustain or overrule them at the fairness hearing.”.)

Based on the foregoing, the settlement is entitled to a presumption of fairness.

Is the Settlement Fair, Adequate and Reasonable?

The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (Kullar v. Foot Locker Retail Inc. (2008) 168 Cal.App.4th 116, 128.) In considering these factors, the Court must give proper deference to the agreement between the parties since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties and the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1027.)

Strength of Plaintiff’s Case. “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (Kullar, 168 Cal.App.4th at 130.) The strength of Plaintiff’s case and the discount applied by Plaintiff to the fair value of the claims must be evaluated against the backdrop of the U.S. Supreme Court’s decision in Viking River Cruises v. Moriana (2022) 142 S. Ct. 1906. The parties’ decision to explore settlement discussions occurred during the period the case was stayed pending the decision in Viking River. Viking River was poised to decide whether the Federal Arbitration Act requires enforcement of an arbitration agreement providing that an employee cannot raise representative claims, including under PAGA. Viking River had the potential of eliminating Plaintiff’s ability to bring this action on a representative basis. (Bollinger Decl. ¶14). One week after the parties reached an agreement to settle, the Supreme Court issued its decision in Viking River, holding that the “FAA preempts the rule of Iskanian in so far as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” Id. at 1924. The Supreme Court stated: “Viking was entitled to enforce the [arbitration] agreement insofar as it mandated arbitration of Moriana’s individual PAGA claim.” Id. The Court further found that Moriana “lacks statutory standing to maintain her non-individual claims in court, and the correct course is to dismiss her remaining claims.” Id. Had the parties not settled at mediation, Asurion would likely have moved to compel arbitration of Plaintiff’s individual claims and sought to

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\$77,720

Record Keeping

\$77,720

Inaccurate Wage Statements

\$188,500

Waiting time Penalties

\$223,479

Total

\$692,450

Risk, Expense, Complexity and Likely Duration of Further Litigation. In addition to the substantial risks and uncertainty inherent in any litigation, litigation of class and representative claims would be expensive, complex and time-consuming, including risks associated with a contested class certification motion, trial and appeal. Had certification failed, most class members would have received nothing. Even if certification was achieved, the damages may require hundreds of mini-trials and the cooperation of hundreds of witnesses.

Risk of Maintaining Class Action Status. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Int'l, Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).)

Amount Offered in Settlement. Plaintiff obtained a \$200,000 non-reversionary settlement. The \$200,000 settlement amount represents 29% of realistic potential damages which, given the risks and uncertainties outlined above, is within the “ballpark of reasonableness.” The \$200,000 settlement amount, if reduced by the requested deductions, will be divided among 263 class members and 249 aggrieved employees with an average of \$370 per employee.

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Extent of Discovery Completed and Stage of Proceedings. As indicated above, at the time of settlement, Plaintiff's counsel had conducted sufficient formal and informal discovery.

Experience and Views of Counsel. The settlement was negotiated and endorsed by class counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions. The settlement was also endorsed by a neutral mediator, who had extensive experience in litigating and mediating similar disputes.

Presence of a Government Participant. This factor is not applicable here.

Reaction of Class Members to Proposed Settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object or opt out. This factor becomes relevant during the fairness hearing.

Given the foregoing, the settlement can be preliminarily deemed "fair, adequate and reasonable."

**CONDITIONAL CLASS CERTIFICATION**

The parties to the settlement request class certification for settlement only. A class action is proper "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc., § 382.) The party seeking certification bears the burden of establishing the existence of an ascertainable class and a well-defined community of interest among class members. (Dunk, 48 Cal.App.4th at 1806.) A lesser standard of scrutiny is used for the certification of a settlement class. (Id. at 1807, fn. 19.)

Numerosity. There are approximately 263 class members. (Bollinger Decl. ¶72). Accordingly, the numerosity element is met.

Ascertainability. The proposed class is defined as "all current and former non-exempt, hourly paid employees of Asurion employed in California at any time during the Class Period." This class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) The class is identifiable through Defendants' records. (Bollinger Decl. ¶72).

Community of interest. "The community of interest requirement involves three factors: (1) predominant common questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class."

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(Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

As to commonality, counsel represents that common questions of law or fact predominate over individual questions because all settlement class members were “subject to common policies or practices regarding [Asurion’s] calculation of their break premiums and sick leave wages, the imposition of arbitration and confidentiality agreements, record-keeping, and issuance of wage statements and final wages.” (Bollinger Decl. ¶73). The primary individual question relates to the issue of damages. (Ibid.) Differences in the amount of individual damages do not by themselves defeat class certification. (Williams v. Superior Court (2013) 221 Cal.App.4th 1353, 1365.)

As to typicality, counsel represents that Plaintiff’s claim is typical of class members’ claims because “Plaintiff is asserting the same claims and seeking the same remedies as the absent Settlement Class Members.” (Bollinger Decl. ¶75).

As to adequacy, Plaintiff has no conflicts with the class and his interests are aligned with those of the class. He has retained counsel with skill and experience in handling wage and hour class actions. (Chavez Decl. ¶¶8, 10.)

Adequacy of Class Counsel. As indicated above, counsel has experience in class action litigation, including wage and hour class actions.

Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by individual class members.

Given the foregoing, the class may be conditionally certified since the prerequisites for class certification have been satisfied.

**NOTICE**

Content of class notice. A copy of the proposed notice to class members is attached to the Declaration of Jeremy Bollinger as Exhibit A to Exhibit 1. The content of the notice is subject to court approval. (Cal. Rules of Court, Rule 3.766(d).) Pursuant to Rule 3.766(d), the notice must include: “(1) A brief explanation of the case, including the basic contentions or denials of the parties; (2) A statement that the court will exclude the member from the class if the member so requests by a specified date; (3) A procedure for the member to follow in requesting exclusion from the class; (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.” Cal.

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Rules of Court, Rule 3.766(d). The notice here appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the scope of the releases to be provided by the class member or aggrieved employee; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing. Accordingly, the notice's contents comply with Rule 3.766(d).

Method of class notice. The Court also approves the method of class notice. Not later than twenty-eight (28) days after the Court grants preliminary approval of the settlement, Asurion will deliver the Class Data to the Administrator. (Settlement Agreement ¶4.2). "Class Data" means "Class Member identifying information in Asurion's possession including the Class Member's name, last-known mailing address, Social Security number and number of Class Period Workweeks and PAGA Pay periods." (Settlement Agreement ¶1.8.) Within fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first class United States Postal Service ("USPS") mail, the Class Notice. (Settlement Agreement ¶7.4.2.) Before mailing the Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (Ibid.) Not later than five (5) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (Settlement Agreement ¶7.4.3.) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (Ibid.) The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (Ibid.)

Cost of class notice. As indicated above, settlement administration costs are estimated to be \$7,500. Prior to the time of the final fairness hearing, the settlement administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

**ATTORNEYS' FEES AND COSTS**

California Rule of Court, rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

West District, Beverly Hills Courthouse, Department 205

**21SMCV01620**

**HECTOR CHAVEZ vs ASURION, LLC, et al.**

January 12, 2023

9:00 AM

Judge: Honorable Edward B. Moreton, Jr.

Judicial Assistant: J. Fletes

Courtroom Assistant: R. Salazar

CSR: Karen Phillips, CSR#4425

ERM: None

Deputy Sheriff: None

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Despite any agreement by the parties to the contrary, “the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable.” (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.) Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.)

The question of whether Class Counsel is entitled to \$70,000 (35%) in attorney fees and \$15,000 in litigation costs will be addressed at the fairness hearing when class counsel brings a noticed motion. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought.

#### INCENTIVE AWARD TO CLASS REPRESENTATIVE

The Settlement Agreement provides for an enhancement award of up to \$10,000 for the class representative, Hector Chavez. (Settlement Agreement ¶3.2.1). In connection with the final fairness hearing, named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he “should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class.” (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than pro forma claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit . . . .’” (Id. at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

#### CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff’s unopposed motion for preliminary approval of class action and PAGA settlement. The Court grants preliminary approval of the Settlement Agreement, attached as Exhibit 1 to the Declaration of Jeremy F. Bollinger. The Court approves, as to form and content, the Notice of Class Action and PAGA Settlement in

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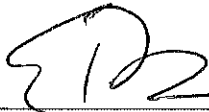
Deputy Sheriff: None

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substantially the form attached to the Settlement Agreement as Exhibit A. The Court preliminarily and conditionally certifies the following class for settlement purposes only: All current and former non-exempt hourly paid employees of Defendants employed in California at any time between June 29, 2020 to the date of Preliminary Approval of the Class Settlement, or October 1, 2022, whichever is sooner. The Court grants the parties' request for leave to file the FAC attached as Exhibit B to the Settlement Agreement. Plaintiffs must file the FAC within 5 days of the Preliminary Approval of the Class Settlement. Defendants may file an answer within the time provided by statute, and if no answer is filed, Defendants' answer to the original complaint will be deemed their answer to the FAC. Finally, the Court sets the final fairness hearing for June 22, 2023.

IT IS SO ORDERED.

DATED: January 12, 2023



Edward B. Moreton, Jr.

Judge of the Superior Court

\*\*\*\*\*END OF TENTATIVE\*\*\*\*\*

The tentative ruling is adopted as the Order of the Court, which is incorporated herein.

The Motion re: NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT filed by Hector Chavez on 12/07/2022 is Granted.